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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,404	01/27/2004	Karl David McAllister	US20010207	3362
173 7590 07/31/2009 WHIRLPOOL PATENTS COMPANY - MD 0750 500 RENAISSANCE DRIVE - SUITE 102 ST. JOSEPH, MI 49085				
EXAMINER				
PERRIN, JOSEPH L				
ART UNIT		PAPER NUMBER		
1792				
MAIL DATE		DELIVERY MODE		
07/31/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/766,404

Applicant(s)

MCALLISTER ET AL.

Examiner

Joseph L. Perrin, Ph.D.

Art Unit

1792

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 50-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 50-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/02)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

1. In applicant's instant amendment, all previous claims (1-49) have been cancelled and new claims 50-56. New claims 50-56 read on the elected species of the restriction requirement of record.

Response to Arguments

2. Applicant's arguments filed 02 June 2009 have been fully considered but they are not persuasive.

3. Turning to the rejection(s) of the claims under 35 U.S.C. § 102, it is noted that the terminology in a pending application's claims is to be given its broadest reasonable interpretation (*In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)) and limitations from a pending application's specification will not be read into the claims (*Sjolund v. Musland*, 847 F.2d 1573, 1581-82, 6 USPQ2d 2020, 2027 (Fed. Cir. 1988)). Anticipation under 35 U.S.C. § 102 is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention. See *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1570, 7 USPQ2d 1057, 1064 (Fed. Cir.), cert. denied, 488 U.S. 892 (1988); *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Moreover, anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or the recognition of

properties that are inherently possessed by the prior art reference. *Verdegaal Brothers Inc. v. Union Oil co. of California*, 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir. 1987), cert. denied, 484 U.S. 827 (1987). A prior art reference anticipates the subject matter of a claim when that reference discloses each and every element set forth in the claim (*In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994) and *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990)); however, the law of anticipation does not require that the reference teach what Applicant is claiming, but only that the claims "read on" something disclosed in the reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984) (and overruled in part on another issue), *SRI Intel v. Matsushita Elec. Corp. Of Am.*, 775 F.2d 1107, 1118, 227 USPQ 577, 583 (Fed. Cir. 1985). Also, a reference anticipates a claim if it discloses the claimed invention such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention. See *In re Graves*, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995), cert. denied, 116 S.Ct. 1362 (1996), quoting from *In re LeGrice*, 301 F.2d 929, 936, 133 USPQ 365, 372 (CCPA 1962).

4. Regarding ARENDT, applicant argues that the disclosed "oscillation control unit 47" is "in fact no oscillation (reversing rotational movement)...but only one way rotation of the wash tub". This is unpersuasive because such argument is speculative and is contrary to the fact of the disclosure. First and foremost, oscillating washing machines are notoriously well known (repletely taught throughout the prior art) and one skilled in

the art would at once envisage the operation of an oscillating washing machine drum within the scope of applicant's disclosure. Additionally, a careful review of ARENDT clearly evidences the use of an oscillation control unit (47) for oscillating the horizontal axis rotary drum. The examiner directs applicant's attention to col. 7, lines 56 *et seq.*, where ARENDT clearly describes the oscillation operation "in which the device for changing the speed 35 is connected to oscillation control unit 47 in such a way that as the amplitude of oscillations decreases, the angular velocity of tub 13 is proportionately increased". This disclosure unambiguously describes the oscillation of the washing machine drum as controlled by controller (47) as well as clearly describing the varying amplitude of oscillation (readable on varying angle of rotation) and varying angular velocity (readable on varying speed). Accordingly, the examiner submits that taking into consideration the level and skill generally available to one having ordinary skill in the art, the description of the washing machine in ARENDT being controlled to oscillate is unambiguous and, contrary to applicant's assertion, is not limited to a one way rotation. The examiner further notes that it is nothing short of common sense that an oscillating washing machine drum necessarily must rotate in both a clockwise and counter-clockwise direction because these are the only possible rotation options of a rotating drum, particularly one which oscillates as readily described in ARENDT. Further, with regard to the terminology "angle of rotation" varying and speed varying, the examiner finds no limiting definition by such terminology and submits that the change of oscillation amplitude and angular velocity disclosed in ARENDT "reads on" applicant's invention as claimed. It is the language itself of the claims which must particularly point out and

distinctly claim the subject matter which the applicant regards as his invention, without limitations imported from the specification, whether such language is couched in terms of means plus function or consists of a detailed recitation of the inventive matter. Limitations in the specification not included in the claim may not be relied upon to impart patentability to an otherwise unpatentable claim. *In re Lundberg*, 113 USPQ 530 (CCPA 1957).

5. Regarding applicant's arguments that ARENDT "teaches away" from the combination with AAPA
6. Regarding the combination of ARENDT and AAPA, applicant argues that the combination would essentially "teach away" from combining ARENDT and AAPA because ARENDT allegedly rotates continuously whereas AAPA describes an oscillating wash method. This is not persuasive for reasons of same indicated above since *both* ARENDT and AAPA are in fact directed to oscillating washing methods and there would be a reasonable expectation of success in combining the analogous art teachings. Simply stated, the argument that ARENDT continuously rotates and does not oscillate is speculative and without merit as evidenced above from the express teachings of oscillating in ARENDT.
7. The examiner notes that the language "varying" is significantly broad in scope and reads on any change in rotational speed, angle of rotation, etc. As such, the claims have been treated accordingly. In addition, the use of "pauses" and varying speed "randomly" are *prima facie* obvious since such changes would appear to produce the predictable results of enhancing tumbling of clothes, and thus, a washing effect.

Applicant may refute this position by providing a proper showing/evidence of unexpected results of a showing of unpredictability in order to show how such modification patentably distinguishes from what is old and well known in the washing art. Applicant is reminded that novelty does not equate to patentability, and an adequate showing is required to overcome the *prima facie* case of obviousness of record, as no such patentably distinguishing features are readily apparent in the instant claims.

Claim Rejections - 35 USC § 102

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
9. Claim 50 is rejected under 35 U.S.C. 102(b) as being anticipated by ARENDT. Regarding claim 50, ARENDT discloses a washing method for a horizontal axis oscillating washing machine including washing, after loading the items and supplying wash liquid, by oscillating (inherently clockwise and counterclockwise in a horizontal axis washing machine) and varying the speed and amplitude of oscillating (readable on varying angle of rotation) (see entire document, for instance, col. 7, lines 56-60). ARENDT also discloses the oscillations effecting less than 1 G angular velocity (col. 8, lines 5-9). ARENT further discloses the use of a controller (34) which controls the changing of tub speed through motor (18). The Examiner notes that it would be common sense to one having ordinary skill in the art that horizontal axis washing

machines effect less than 1 G centrifugal force during a washing operation, otherwise, the load would stick to the inner wall of the tub and no washing effect would occur.

Claim Rejections - 35 USC § 103

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 51-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over ARENDT in view of AAPA. Recitation of ARENDT is repeated here from above. While ARENDT discloses an oscillating washing method and inherently discloses at least a degree of pausing between oscillations which are inherently required to change direction (i.e. come to zero acceleration and zero speed), ARENDT does not expressly disclose pauses between oscillations. In Figure 1 and relative associated text of applicant's original disclosure, applicant discloses that it is known to operate a horizontal axis washing machine with clockwise and counterclockwise oscillations including pauses thereinbetween which would effect a tumbling action and thus, a washing effect. Therefore, it would have been obvious to one of ordinary skill in the art to apply the technique of using pauses between oscillations as taught in AAPA in the washing method of ARENDT to yield the predictable results of increase a tumbling action (i.e. washing effect) in an oscillating washing machine. Moreover, there would be a reasonable expectation of success in combining ARENDT and AAPA, since each of the references are analogous to oscillating washing methods. Regarding claim 52, changing/varying the length of each pause (i.e. time) is considered a result effective

variable as one skilled in the art would recognize optimizing the pause to optimize the tumbling of clothes would produce the predictable result of enhancing tumbling and washing effect. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the pause length (increase or decrease), since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

12. Claims 53-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over ARENDT in view of COORESMANS. Recitation of ARENDT is repeated here from above. However, while ARENDT discloses variable speeds ARENDT does not expressly disclose washing the items being oscillated in random variable speeds. COORESMANS teaches that it is known to optimize liquid movement and subsequent washing force in an oscillating washing apparatus by using either regular, periodic oscillation or random, non-periodic irregular oscillation (*see* paragraph [0064]). Therefore, the position is taken that a person of ordinary skill in the art at the time the invention was made would have been motivated to modify the known oscillation cycle disclosed by applicant with either a periodic oscillation or a random, non-periodic irregular oscillation in order to optimize a washing action. It is further noted that it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Moreover, there would be a reasonable expectation of success in combining ARENDT

and COORESMANS, since each of the references are analogous to washing methods and directed to enhancing washing methods.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

14. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 8:00-4:30.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph L. Perrin/
Joseph L. Perrin, Ph.D.
Primary Examiner
Art Unit 1792

JLP